

In re Patent Application of

MAIL STOP Appeal Brief

Theodore R. Zeigler

Application No. 10/779,641

Group Art Unit: 3635

Filed: February 18, 2004

Examiner: Bartosik, Anthony N.

For: EXPANDABLE AND COLLAPSIBLE Confirmation No. 9084  
STRUCTURES INCLUDING SPLIT  
SCISSOR ASSEMBLY

REPLY BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
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Sir:

This Reply Brief is in response to the Examiner's Answer dated November 17, 2008.

The central issue in this appeal is whether, under the broadest, reasonable interpretation consistent with the specification of the term "adjacent" by one skilled in the art to which the present invention pertains, the components identified as "2nd lower strut, 1st end" and "1st strut, 2nd end" of the structure illustrated in Modified Figure 3A and Modified Figure 3C in the Examiner's Answer at Page 14-15 (from U.S. Patent No. 5,274,980 to Zeigler (the *Zeigler* '980 patent)) can be considered to be "substantially adjacent" when the structure is in a folded position as shown in Modified Figure 3C.

**Examiner's Interpretation is Unreasonable**

It is the appellant's position that such an interpretation is unreasonable. As seen in Modified Figure 3C, when the structure is in a folded position:

- the “2<sup>nd</sup> lower strut, 1<sup>st</sup> end” and the “1<sup>st</sup> strut, 2<sup>nd</sup> end” are separated by approximately three quarters of the entire length of struts 220 and 232; and
- the “2<sup>nd</sup> lower strut, 1<sup>st</sup> end” and the “1<sup>st</sup> strut, 2<sup>nd</sup> end” are separated by more than the *entire* length of the “2<sup>nd</sup> lower strut” (228)
  - the 2<sup>nd</sup> lower strut, 2<sup>nd</sup> end” is closer to the “1<sup>st</sup> strut, 2<sup>nd</sup> end” than the “2<sup>nd</sup> lower strut, 1<sup>st</sup> end”, and
  - the “1<sup>st</sup> strut, 2<sup>nd</sup> end” is beyond the opposite end of the 2<sup>nd</sup> lower strut from the “2<sup>nd</sup> lower strut, 1<sup>st</sup> end”.

Even conceding that “substantially adjacent” is broader than “adjacent”, the Examiner’s interpretation would render the term “adjacent” meaningless.

#### **Examiner’s Interpretation is Inconsistent with the Specification**

In paragraph [0023] of the present application, a definition of the word “proximate” is provided that gives context to the meaning of “adjacent”:

Proximate, in the sense used here, means that the strut ends are *close but not necessarily adjacent* to one another and is meant to contrast with the situation where the strut ends are particularly remote. For example, when the split scissor assembly 21 is in the folded position, the first end 25’ of the first strut 25 is at substantially the opposite end of the assembly from the first end 31’ of the second strut lower portion 31 and those ends are not proximate in the sense used here. (emphasis added)

It is the Appellant’s position that, if “proximate” is defined as excluding “at opposite ends”, then the term “adjacent”, which is generally understood to suggest a closer relationship than “proximate” and which is used in a context in the quoted passage that indicates “adjacent” is closer than “proximate”, also excludes “at opposite ends”.

The Examiner asserts that the express definition in the Specification of the term “proximate” at paragraph [0023] does not state “with reasonable clarity, deliberateness, and precision” that the definition is to be imported into the claims. The Examiner alleges that “Ambiguity arises in the language ‘[p]roximate, in the sense used here’ and that the definition could be considered to be limited to the description of FIGS. 2A-2B.

However, in the entire application, the term “proximate” is *only* used in the specification and claims (2, 3, and 5) to describe the relationship of ends of struts (or hubs at the ends of struts) to one another. *See* Paragraphs [0023]-[0025]. In the context of the application of which the definition is provided, there is no other sense to the word proximate and the expression “in the sense used here” is clearly intended to apply the definition to the entire application and exclude other definitions that might be provided outside of the application. Thus, the patentee has provided an express definition of the term “proximate” in which “proximate” is defined as not necessarily being as close as “adjacent” but excludes “at opposite ends”. “Adjacent”, which is at least as close as or closer than “proximate”, also excludes “at opposite ends”.

#### **Examiner's Interpretation is Inconsistent with the Ordinary Meaning in the Art**

The present invention relates to expandable and collapsible structures. The patents applied as prior art against the claims of the present application demonstrate that the Examiner's interpretation of “substantially adjacent” is inconsistent with the ordinary meaning of the term “adjacent” as used in the art of expandable and collapsible structures to which the present invention pertains.

The *Zeigler* '980 patent uses the word “adjacent” once in the specification (Col. 10, line 68) and three times in the claims (claim 5, lines 3 and 6, and claim 6, line 3) to describe

structures (quad sections made up of a plurality of struts, hubs, and locking bars) that are immediately next to each other. In the '980 patent, adjacent quad sections share common components.

Similarly, U.S. Patent No. 6,141,934 to *Zeigler* (*Zeigler* '934) uses the word "adjacent" to describe two pairs of strut pairs (e.g., 23a, 23b) joined to each other so as to form corners of a roof 35a. *See Zeigler* '934 at Col. 5, line13; Col. 6, line39; Col. 7, line 15, and claims 1, 4, 13, and 17-18.

U.S. Patent Application Publication 2002/0189659 to *Carter* uses the word "adjacent" in a similar fashion to describe structures that are immediately successive relative to one another (adjacent legs and adjacent pairs of legs as described in Paragraph [0029]) or attached to one another (support strut member 60 to a leg as described in Paragraph [0031] and outer end 44 of link member to a leg as described in Paragraph [0032]).

In Modified Figure 3C, the "2nd lower strut, 1st end" and "1st strut, 2nd end" are not next to one another, are not attached to one another, and are not immediately successive relative to one another. Even conceding that the word "substantially" broadens the meaning of the word "adjacent", it cannot reasonably broaden the word "adjacent" to encompass the relationship of "2nd lower strut, 1st end" to the "1st strut, 2nd end" wherein the "2nd lower strut, 1st end" is approximately three-quarters of the length of the "1st strut" from the "1<sup>st</sup> strut, 2nd end" and more than the entire length of the "2<sup>nd</sup> lower strut" from the "1st strut, 2nd end".

**Conclusion**

In view of the foregoing, it is respectfully requested that the final rejection of claims 1-16 and 18-24 be reversed, and that claims 1-16 and 18-24 be allowed.

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Respectfully submitted,  
  
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